

**THE DISCIPLINE COMMITTEE OF THE
COLLEGE OF OPTICIANS OF ONTARIO**

Panel: Mr. Derick Summers, Chair, Appointed Optician Member
Ms. Eve Hoche, Public Member
Mr. Fazal Khan, Elected Optician Member

Between

College of Optician of Ontario

Mr. Antonio Di Domenico, Counsel for the College

And

Ms. Bonita Ciotka, C-3456

Member, Self Represented

Mr. Brian Gover, Independent Legal Counsel

July 14, 2009

DECISION AND REASONS

The matter came on for hearing before a panel of the Discipline Committee on July 7, 2009 at the College of Opticians of Ontario in Toronto.

The Allegations

Counsel for the College submitted a copy of the Notice of Hearing (marked as Exhibit 1) which set out the allegations against Ms. Ciotka. It was alleged that Ms. Ciotka committed acts of professional misconduct as defined in section 1, paragraphs 26 and 28 of Ontario Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c.34 in that she:

- (a) Contravened the *Regulated Health Professions Act, 1991* by engaging in the controlled act of dispensing eyeglasses for vision or eye problems without being a member authorized by a health profession Act to perform the controlled act; and
- (b) Engaged in conduct or performed an act, in the course of practicing Opticianry, that, having regard to all the circumstances, would reasonably be regarded by members of the College of Opticians as disgraceful, dishonourable or unprofessional.

The particulars of these allegations are:

- (i) On or about June 10 and June 17, 2006, Ms. Ciotka dispensed eyeglasses for vision or eye problems to Mr. Michael Hayes at Walmart Vision Centre, 1002 Chemong Road, Peterborough ON K9H 7E2. At that time, Ms. Ciotka's certificate of registration as a registered student optician was under suspension. Accordingly, Ms. Ciotka was not a member authorized by a health profession Act to perform the controlled act of dispensing.

Members Plea

Bonita Ciotka C-3456 admitted to the allegations set out in the Notice of Hearing. The panel was satisfied that the Member's admission was voluntary, informed and unequivocal.

Statement of Agreed Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced a Statement of Agreed Facts and Admission marked as Exhibit 2. The Statement of Agreed Facts provided as follows:

FACTS

1. Bonita Ciotka-Cherry ("Ms. Ciotka-Cherry") became a registered student optician in March, 2003.
2. Ms. Ciotka-Cherry's certificate of registration as a registered student optician was suspended in July, 2004 as a result of Ms. Ciotka-Cherry's non-payment of fees. It was reinstated in August, 2006.
3. Ms. Ciotka-Cherry's certificate of registration as a registered student optician was under suspension in June, 2006.
4. Ms. Ciotka-Cherry was neither a member of the College of Optometrists of Ontario nor the College of Physicians and Surgeons of Ontario in June, 2006.
5. Ms. Ciotka-Cherry was employed by Walmart Vision Centre, 1002 Chemong Road, Peterborough ON K9H 7E2 ("Walmart Vision") in June, 2006.
6. On June 10, 2006, Mr. Michael Hayes ("Mr. Hayes") attended Walmart Vision.
7. Mr. Hayes had a prescription from an optometrist when he entered Walmart Vision. He did not have a pair of old eyeglasses when he entered Walmart Vision.
8. Mr. Hayes advised a salesperson at Walmart Vision that he had lost his eyeglasses and that he needed to get his prescription filled for a new pair of eyeglasses, which were not simple magnifiers. He advised the salesperson that he wanted an optician to assist him. The salesperson advised Mr. Hayes that she would help him pick out a set of frames and

that the optician working that day, Ms. Ciotka-Cherry, would take his measurements and perform the adjustments thereafter.

9. Ms. Ciotka-Cherry approached Mr. Hayes and advised that she would see him after she assisted another customer. She later returned and asked Mr. Hayes for a copy of his prescription. Mr. Hayes provided Ms. Ciotka-Cherry with a copy of his prescription.
10. Ms. Ciotka-Cherry then asked Mr. Hayes a series of questions, including whether he preferred an invisible line for his bifocal lenses, whether he wanted his eyeglasses to be without glare and whether he wanted his eyeglasses to be scratch resistant. Ms. Ciotka-Cherry also took Mr. Hayes' personal information.
11. Ms. Ciotka-Cherry then brought a pupilometer to Mr. Hayes' face and asked him to stare at the green dot. When asked about the purpose of this procedure, Ms. Ciotka-Cherry advised that it would assist with placing the lenses on the eyeglasses for proper focussing.
12. Ms. Ciotka-Cherry then asked Mr. Hayes to stare at the bridge of her nose after asking him to wear the eyeglasses he had selected. Ms. Ciotka-Cherry marked each lens with a felt marker.
13. Ms. Ciotka-Cherry advised Mr. Hayes that he could pick up the eyeglasses that he had selected in approximately one week.
14. Ms. Ciotka-Cherry provided Mr. Hayes with her business card at Mr. Hayes' request. The business card read, in part, "Bonita Ciotka, Optical Manager."
15. On June 17, 2006, Mr. Hayes returned to Walmart Vision to purchase and pick-up the eyeglasses he had ordered on June 10, 2006. Mr. Hayes approached Ms. Ciotka-Cherry who was seated alone at a customer service table.
16. Ms. Ciotka-Cherry then dispensed eyeglasses that were not simple magnifiers to Mr. Hayes using the prescription that Mr. Hayes has provided to her on June 10, 2006.
17. After providing Mr. Hayes with the eyeglasses, Ms. Ciotka-Cherry asked Mr. Hayes to read paragraphs that decreased in size from a card. Mr. Hayes read the paragraph as requested.
18. After putting on the eyeglasses, Mr. Hayes advised Ms. Ciotka-Cherry that they were too loose. Ms. Ciotka-Cherry took the eyeglasses to the back area of the Store and returned approximately five minutes later. Mr. Hayes then put on the eyeglasses and advised Ms. Ciotka-Cherry that they were no longer loose.
19. Mr. Hayes paid \$424.00 to Ms. Ciotka-Cherry in exchange for the eyeglasses. Ms. Ciotka-Cherry then provided Mr. Hayes with a receipt for this transaction.
20. In June, 2006, Ms. Ciotka-Cherry's certificate of registration as a registered student optician was under suspension. Accordingly, Ms. Ciotka-Cherry was not a member

authorized by a health profession Act to perform the controlled act of dispensing eyeglasses that were not simple magnifiers for vision or eye problems.

21. Ms. Ciotka-Cherry misled Mr. Hayes into believing that she was authorized to dispense eyeglasses that were not simple magnifiers for vision or eye problems by engaging in the aforementioned conduct and in failing to inform Mr. Hayes that she was not authorized to do so.
22. Ms. Ciotka-Cherry holds a certificate of registration as a registered optician.

DECISION:

The panel reviewed and considered the Notice of Hearing, the Statement of Agreed Facts, the submissions of the parties and found that the facts support findings of professional misconduct as alleged in the Notice of Hearing.

PENALTY:

Counsel for the College advised the panel that a joint submission as to penalty had been agreed upon. Ms. Ciotka stated that she was in full agreement with the consent disposition.

CONSENT DISPOSITION

The parties agreed to dispose of this matter in the following way:

- (a) Ms. Ciotka-Cherry has signed an undertaking in the following terms:
 - (i) She will not engage in the controlled act of dispensing eyeglasses for vision or eye problems without being a member authorized by a Health Professions Act to perform the controlled act.
- (b) The parties consent to the disposition of this proceeding by an Order of the Discipline Panel in the form attached hereto, which contains the following terms:
 - (i) Ms. Ciotka-Cherry shall appear before the panel to be reprimanded;
 - (ii) Ms. Ciotka-Cherry's certificate of registration in Opticianry will be suspended for a period of two (2) weeks commencing on the date of this order;
 - (iii) Pursuant to section 53.1 of the *Health Professions Procedural Code*, Ms. Ciotka-Cherry shall pay part of the costs of the College of Opticians of Ontario in the amount of \$2,000. The costs can be paid over a period of then (10) months at a rate of \$200 per month. The payments will be made by way of ten (10) preauthorized debits from a credit card to be specified by Ms. Ciotka-Cherry in the amount of \$200 each, payable on the 15th day of each month, to commence immediately after date of the Order, until final payment is rendered. If any debit to Ms. Ciotka-Cherry's credit card

cannot be processed on the payment date, the total amount remaining outstanding shall be due and payable forthwith.

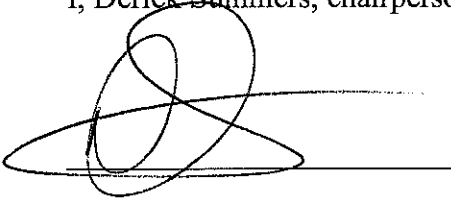
Penalty Decision and Reasons

Having considered the parties' submissions in support of the Consent Disposition and the advice of independent legal counsel, the panel concluded that the Consent Disposition is fair and in the public interest. Consequently, the panel makes the following Order as to penalty:

- (i) Ms. Ciotka shall receive a verbal reprimand to be administered by the Panel.
- (ii) Ms. Ciotka's Certificate of Registration as a Registered Optician in the Province of Ontario shall be suspended for a period of two (2) weeks, commencing on the date of this Order.
- (iii) Ms. Ciotka shall pay part of the costs of the College of Opticians of Ontario in the amount of \$2,000. The costs are to be paid over a period of ten (10) months at a rate of \$200 per month. The payments will be made by way of ten (10) preauthorized payments from a credit card to be specified by Ms. Ciotka in the amount of \$200 each, payable on the 15th day of each month, to commence immediately after date of this Order, until final payment is rendered. If any payments to Ms. Ciotka's credit card cannot be processed on the payment date, the total amount remaining outstanding shall be due and payable forthwith.

Ms. Ciotka waived her right to appeal and the panel issued its reprimand at the end of the hearing.

I, Derick Summers, chairperson, sign these reasons on behalf of the panel members listed above.

A handwritten signature in black ink, appearing to be "Derick Summers", written over a horizontal line. The signature is somewhat stylized and loops around itself.